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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
DARNELL SINGER, )  
 )  
Appellant, )  
 )  
v. )  
 )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
 )  
Respondent. )

PCHB No. 815

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of an order for payment of oil-spill cleanup costs; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 6th day of August, 1975, at Seattle, Washington; and appellant Darnell Singer appearing pro se, and respondent Washington State Department of Ecology appearing through its attorney, Joseph J. McGoran; and Board member present at the hearing being Walt Woodward; and the Board having entered on the 14th day of August, 1975 its proposed Findings of Fact, Conclusions of Law and Order; and the Board having served said proposed Findings, Conclusions

1 and Order upon all parties herein by certified mail, return receipt  
2 requested and twenty days having elapsed from said service; and

3 The Board having received appellant's exceptions to said proposed  
4 Findings of Fact, Conclusions of Law and Order and having considered and  
5 denied same; and the Board being fully advised in the premises; now  
6 therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
8 Findings of Fact, Conclusions of Law and Order, dated the 14th day of  
9 August, 1975, and incorporated by this reference herein and attached  
10 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 7<sup>th</sup> day of <sup>October</sup>~~September~~, 1975.

13 POLLUTION CONTROL HEARINGS BOARD

14 Chris Smith  
15 CHRIS SMITH, Chairman

16 W. A. Gissberg  
17 W. A. GISSBERG, Member

18 Walt Woodward  
19 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

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PCHB No. 815

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of an order for payment of oil-spill cleanup costs, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on August 6, 1975.

Appellant appeared pro se; respondent appeared through Joseph J. McGoran, Assistant Attorney General. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

Appellant had requested an informal conference under WAC 371-08-110 at the time of filing his appeal, but, given the option to proceed with

EXHIBIT A

the informal conference at the outset of this hearing, declined to do so and requested that the formal hearing commence.

Witnesses were sworn and testified. Exhibits were admitted. Counsel for respondent made a closing argument. Appellant declined to make a closing argument.

From testimony heard, exhibits examined, argument considered and record reviewed, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Appellant owns a home and land at 14823 - 88th N.E., Bothell, King County. The home is reached by a 440-foot single-lane gravelled driveway which rises from street level to the up-hill location of the home.

Appellant is the manager of a parking garage. Desiring to settle dust and firm up the portion of his driveway nearest his home, appellant, on February 25, 1974, took possession of a 55-gallon drum, containing 30 to 40 gallons of waste crankcase oil, abandoned by the former operator of an automobile repair facility at the parking garage. Appellant took the drum home and, that afternoon, applied the waste oil to the uppermost 12-foot section of the driveway. It rained that night and was raining when appellant left for work, in the dark, at 6:30 a.m. on February 26, 1974.

There is an unnamed tributary of Juanita Creek which passes across appellant's property, and under the driveway through a culvert, at the low level of the driveway.

The rain washed at least 15 gallons of the waste oil down the

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 driveway and into the unnamed creek.

2 II.

3 At 11:00 a.m., February 26, 1974, respondent received a telephone  
4 complaint from a property owner downstream of appellant's residence of  
5 oil on a duck pond created by the unnamed creek.

6 An inspector with more than three years' experience in oil spill  
7 matters for respondent investigated the complaint. He estimated from  
8 ten to 15 gallons of oil had accumulated on the duck pond and immediately  
9 installed an emergency sorb oil boom on the pond's downstream side.

10 The inspector traced the oil upstream to appellant's driveway and  
11 saw oil leaching from the driveway into the unnamed creek. He saw no oil  
12 in the creek upstream from appellant's driveway. Unable to contact anyone  
13 at appellant's home, he summoned Marine Oil Pickup Service, Inc., (MOP  
14 in Seattle.

15 III.

16 MOPS arrived at the oil spill area at 3:20 p.m. and immediately  
17 began containment and cleanup work at the pond.

18 At 3:40 p.m. appellant returned to his home from work and under-  
19 standably was upset to find vehicles and personnel of respondent, MOPS and  
20 the Coast Guard involved in the matter.

21 IV.

22 At an on-site conference, respondent's inspector told appellant  
23 that MOPS could be dismissed if appellant had the capability and the  
24 desire, with the inspector's assistance, to contain and clean up the  
25 oil spill. Appellant, understanding this to mean that MOPS already was  
26 on the scene and that appellant would be billed for the MOPS appearance

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 at any event, elected to have MOPS continue. Appellant was informed by  
2 the inspector that appellant could stop the source of the leaching oil  
3 by removing the oil-impregnated gravel and by channeling the area. This  
4 was done by appellant.

5 At 5:00 p.m., the inspector was informed by MOPS that the work was  
6 not completed and that overtime would have to be paid if it continued  
7 that day. The inspector told MOPS to cease work and to return on  
8 February 27, 1974 for work at regular pay. Appellant was not present  
9 when this decision was made and was not informed, therefore, that a  
10 second day of MOPS' work would be required.

11 V.

12 MOPS billed respondent for \$338.72 for the containment and  
13 cleanup work and was paid that sum by respondent on State Warrant  
14 No. 1147463.

15 In Docket No. DE 74-814, dated December 26, 1974, respondent,  
16 pursuant to RCW 90.48.335, billed appellant for \$338.72. Appellant  
17 made application for relief from that liability but, on January 27, 1975,  
18 respondent denied the relief, which is the subject of this appeal.

19 VI.

20 Appellant, under examination by the presiding officer, conceded  
21 that his assent to continuation of the cleanup work by MOPS was an  
22 assumption, on appellant's part, of liability to pay for the MOPS's  
23 work. However, it was appellant's contention that respondent "over-  
24 reacted," that the inspector's placement of the emergency sorb oil boom  
25 was sufficient to contain the small amount of oil which leached from the  
26 driveway, and that MOPS never should have been called in the first place.

VII.

Any Conclusion of Law hereinafter recited which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II.

RCW 90.48.320 provides:

It shall be unlawful, except under the circumstances hereafter described in this section, for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore whether publicly or privately operated, regardless of the cause of the entry or fault of the person having control over the oil, or regardless of whether it be the result of intentional or negligent contact, accident or other cause. This section shall not apply to discharges of oil in the following circumstances:

(3) Where a person having control over the oil can prove that a discharge was caused by:

- (a) an act of war or sabotage, or
- (b) negligence on the part of the United States government, or the state of Washington.

Appellant's source of oil (oil drum or oiled road) was a "fixed or mobile facility or installation" subject to the provisions of the above statute. Oil from appellant's source was allowed to enter the waters of the state. Under these circumstances, appellant must be found to have violated RCW 90.48.320 unless he can show that he falls within one of the above exceptions. Appellant made no such showing.

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER



1 Therefore, appellant violated RCW 90.48.320.

2 III.

3 RCW 90.48.325 provides that any person violating the provisions  
4 of RCW 90.48.320 is obligated to "immediately collect and remove" the  
5 oil:

6 It shall be the obligation of any person owning or having  
7 control over oil entering waters of the state in violation  
8 of RCW 90.48.320 to immediately collect and remove same.  
9 If it is not feasible to collect and remove, said person  
shall take all practical actions to contain, treat and  
disperse the same.

10 . . . .

11 "Immediately" refers to action measured from the time of discovery  
12 and not from convenience, knowledge, or ability of person obligated to  
clean up the oil. Appellant failed to act immediately here.

3 IV.

14 Having concluded that appellant violated RCW 90.48.320 and was  
15 obligated to immediately clean up the oil, and did not do so, the duty  
16 to take charge of this situation devolved upon respondent. RCW 90.48.335;  
17 RCW 90.48.330. In order to recoup the necessary expenses incurred in  
18 cleaning up the oil, the Department may thereafter issue an order for  
19 reimbursement under RCW 90.48.340. It has done so and we affirm its  
20 action.

21 V.

22 Any Finding of Fact which should be deemed a Conclusion of Law is  
23 hereby adopted as such.

24 From these Conclusions, the Pollution Control Hearings Board enter  
25 this

26

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

ORDER

The Department's Order in Docket No. DE 74-81 for ordering reimbursement for necessary clean up expenses is affirmed.

DATED this 14<sup>th</sup> day of August, 1975.

Walt Woodward  
WALT WOODWARD, Presiding Officer

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER